

FCC MAIL SECTION Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

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DA 96-1019

In the Matter of)
DISCLOSURE)
Amendment of Section 73.202(b),) MM Docket No. 96-29
Table of Allotments,) RM-8731
FM Broadcast Stations.)
(Chester and Richmond)
Virginia))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 21, 1996

Released: June 28, 1996

By the Chief, Allocations Branch:

1. At the request of Hoffman Communications, Inc. ("petitioner"), licensee of Station WDYL(FM), Channel 289A, Chester, Virginia, the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 2939 (1996), proposing the substitution of Channel 266A for Channel 289A at Chester and modification of Station WDYL(FM)'s license to specify operation on Channel 266A. To accommodate the substitution of Channel 266A at Chester, petitioner also requested the substitution of Channel 289A for unoccupied but applied for Channel 266A at Richmond, Virginia. Petitioner filed comments reiterating its intention to apply for Channel 266A, if allotted to Chester. Barbara B. Bennis ("Bennis"), permittee of Station WSMJ(FM), Channel 266A, Richmond, Virginia, filed reply comments supporting the proposed channel change.¹

2. In support of its proposal, petitioner states that Station WDYL(FM) and Station WSMJ(FM) are precluded from operating with 6 kilowatts ERP on their respective channels due to short-spacing conflicts with existing FM stations. Petitioner asserts that the proposed exchange of channels would enable the respective stations to increase the power of their stations to 6.0 kilowatts, thereby increasing the number of people that could be served.

3. We believe the public interest would be served by the exchange of channels between

¹ At the time the Notice was issued, five applications were pending for Channel 266A at Richmond. On April 22, 1996, Bennis's application for a construction permit for Channel 266A at Richmond was granted. Bennis now holds a construction permit for a new station, Station WSMJ(FM), Channel 266A, Richmond, Virginia. In reply comments, Bennis states that petitioner's proposal serves the public interest and she affirmatively supports the channel "swaps".

Station WDYL(FM), Chester, and Station WSMJ(FM), Richmond, Virginia, since it could provide both communities with the potential to improve their service. Channel 266A can be allotted to Chester and Channel 289A can be allotted to Richmond, Virginia, in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in Stations WDYL(FM)'s and WSMJ(FM)'s authorizations, respectively.²

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 12, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

| <u>City</u> | <u>Channel No.</u> |
|--------------------|--|
| Chester, Virginia | 266A |
| Richmond, Virginia | 233B, 251B, 271B, 279B, 289A, 293B |

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WDYL(FM), Chester, Virginia, IS MODIFIED to specify operation on Channel 266A in lieu of Channel 289A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WDYL(FM)'s permit, BMPH-951025ID, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BMPH-951025ID, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WSMJ(FM), Richmond, Virginia, IS MODIFIED to specify operation on Channel 289A in lieu of Channel 266A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station

² The coordinates for Channel 266A at Chester are North Latitude 37-22-58 and West Longitude 77-25-41. The coordinates for Channel 289A at Richmond are North Latitude 37-30-52 and West Longitude 77-30-28.

WSMJ(FM)'s construction permit, BMPH-960227IC, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BMPH-960227IC, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

7. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the permittee of Station WSMJ(FM), as follows:

Lauren A. Colby
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113
(Counsel for Barbara B. Benns)

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau